IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.730 of 2000.

Date of Decision :20th November, 2007.

State of H.P. …Appellant.

Versus:

Amar Singh and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General. .

For Respondent.

Sanjay Karol, J.(Oral)

The present appeal arises out of the judgment dated 31st August, 2000 passed by Judicial Magistrate, Ist Class (II), Shimla in Criminal Case No.63/3 of 1995 titled as State Vs. Amar Singh and others acquitting the accused persons of the charged offence under Section 13 of the Gambling Act, 1867.

As per the case of the prosecution on 28th March, 1995 at about 5.45 P.M., Head Constable (H.C.) Shamsher Singh, H.C. Vijay Kumar, Inspector Bhagat Singh and Constable Jitender Kumar found the accused persons sitting on public road and playing cards. The accused persons were gambling with currency which was found on the gunny bag placed in the centre and also in the socks and below the knee of the accused persons. Gunny bag, playing cards and the

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

currency notes were taken into possession and sealed with seal impression “H”. Rukka Ext.PW/2/A was sent to the police Station and on the basis of which F.I.R. (Ext.PW-2/B) was registered with Police Post, Kasumpti dated 28th March, 1995 under Section 13 of the Gambling Act.

On completion of the investigation, the challan was presented in the Court for trial and notice of accusation was issued to the accused persons under Section 13 of the Gambling Act. The accused persons pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined two witnesses and the statements of the accused persons under Section 313 Cr.P.C. were also recorded.

The Court below, appreciating the evidence and material on record acquitted the accused persons for the reason that no independent witness was associated during investigation and examined in the Court.

Vijay Kumar (PW-1) and Karanjit Singh (PW-2) have undoubtedly deposed that they found the accused persons gambling and took into possession the cards (Ext. P-2 to P-44), currency notes (Ext.P-45 to P-51) and also gunny bag (Ext.P-1). Both these witnesses are police officials. As per the case of the prosecution, the alleged offence is stated to have taken place on a public road at about 5.45 P.M. It has come on record through the testimonies of these witnesses that at the place of occurrence there are houses belonging to the private people. It has come on record that no effort was made by the said witnesses to associate any independent witness. No

attempt was made to summon the witnesses from the houses which were just adjoining to the place of occurrence of the incident. It is not the case of the prosecution that no witnesses were available at the site. It is also not the case of the prosecution that the accused persons are habitual gamblers. Perusal of the record shows that the cited witnesses were not examined by the prosecution in spite of adequate opportunity granted by the Court. The prosecution evidence was closed vide order dated 20th August, 2000.

The manner in which the investigation has been carried out is shocking and reveals a very sorry state of affairs. Recovery memo Ext.PW-1/A only mention the names of the witnesses and no details of parentage and address are given.

The Court below has acquitted the accused persons of the charged offence. The material on record has been appreciated in its entirety. There is nothing on record to show any perversity. In the facts and circumstances of the case, I see no reason to interfere with the judgment of the trial court. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

November 20, 2007(R)